89-1915

(1)

Supreme Court, U.S.
FILED
JUN 1 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term, 1989

BRADLEY ARTHUR,

Petitioner,

v.

HILLSBOROUGH COUNTY BOARD
OF CRIMINAL JUSTICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Bruce S. Rogow
Nova University Law Center
3100 S.W. 9th Avenue
Fort Lauderdale, Florida 33315
(305) 524-2465

Counsel for Petitioner

QUESTIONS PRESENTED

I.

ARE TITLE 42 U.S.C. §1983 ACTIONS BROUGHT IN STATE COURT AGAINST A COUNTY AGENCY RESPONSIBLE FOR OPERATING A COUNTY JAIL BARRED BY FLORIDA'S SOVEREIGN IMMUNITY STATUTE?

II.

DOES HOWLETT V. ROSE, NO. 89-5383, NOW AWAITING DECISION IN THIS COURT, REQUIRE REVERSAL OF THE DECISION BELOW?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF CITATIONS	iii
OPINION BELOW	iv
JURISDICTION	iv
THE STATUTE INVOLVED	iv
FLORIDA STATUTE §768.28(1) . .	v-vi
STATEMENT OF THE CASE . . .	1
REASON FOR GRANTING CERTIORARI .	3
CONCLUSION . . .	4
APPENDIX . . .	6-16

TABLE OF CITATIONS

PAGE

Hill v. Department of Corrections 513 So.2d 129 (Fla. 1987) cert.denied, 484 U.S. 1064 (1988) 1

Howlett v. Rose 537 So.2d 706 (Fla. 2d DCA 1989) rev.denied 545 So.2d 1367 (Fla. 1989), cert.granted, 110 S.Ct. 403 (1989) . . . passim

OPINION BELOW

The opinion of the District Court of Appeal of Florida, Second District, is not reported. It is reprinted at Appendix, p.1.

JURISDICTION

The decision of the District Court of Appeal was rendered on February 21, 1990. A timely Motion for Rehearing was denied on March 13, 1990. Pet.App.6. This Petition has been filed within 90 days of that date. This Court has jurisdiction pursuant to Title 28 U.S.C. §1257(a).

THE STATUTE INVOLVED

Title 42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States ...to the deprivation of any rights privileges

or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

FLORIDA STATUTE §768.28(1)

Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.--

(1) In accordance with s. 13, Art. X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope

of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

STATEMENT OF THE CASE

Bradley Arthur sued the Hillsborough County Board of Criminal Justice and two of its employees in Florida state court for injuries received as a result of a beating sustained while a prisoner in the Hillsborough County, Florida jail. The Board of Criminal Justice is responsible for the operation of that jail. The various causes of action were brought pursuant to Title 42 U.S.C. §1983. After the claims against the individual defendants were resolved, the Board of Criminal Justice obtained a summary judgment. Bradley Arthur appealed to the District Court of Appeal, Second District of Florida.

That Court dismissed Arthur's case on February 21, 1990, on the basis of Hill v. Department of Corrections, 513 So.2d 129 (Fla. 1987) and Howlett v. Rose 537 So.2d 706 (Fla. 2d DCA). Pet.App.1. Those cases preclude §1983 suits in Florida state courts against

the State (Hill) and against county governmental units (Howlett). The Petitioner had informed the Florida District Court of Appeal of Howlett's pendency in this Court.

Certiorari had been granted last year in Howlett v. Rose, 110 S.Ct. 403 (1989) (No. 89-5383). The case was argued on March 20, 1990. It is awaiting decision at the time this Petition was prepared.

Based upon the pendency of Howlett v. Rose, Petitioner asked the Florida District Court of Appeal to grant rehearing and consider holding Petitioner's case in abeyance pending this Court's Howlett decision. Pet. App. 3-5. The motion was denied. Pet. App. 6.

Petitioner then filed a Motion for Stay (or Recall) of the Mandate, pending his timely certiorari petition to this Court. Pet. App. 7-9. That motion was granted on April 12, 1990. Pet. App. 10.

Therefore, the final disposition of this case rises or falls upon this Court's forth-

coming decision in Howlett v. Rose, No. 89-5383.

REASON FOR GRANTING CERTIORARI

If this Court reverses the Florida District Court of Appeal, Second District, decision in Howlett v. Rose, then certiorari should be granted in this case, and the Second District's decision should be reversed based upon Howlett.

The decision below simply follows the Second District's reasoning in Howlett. Petitioner adopts the arguments made to this Court by the Petitioner in Howlett. Howlett's outcome must determine the outcome in this case. If this Court affirms the Florida District Court of Appeal and holds that §1983 suits may be barred in Florida state courts by state sovereign immunity, then certiorari should be denied in this case.

Therefore this Petition is based solely upon this Court's forthcoming decision in

Howlett v. Rose, and assumes that the Florida District Court of Appeal decision will be reversed.

If for some reason there is no decision this term in Howlett, then Petitioner asks that this Petition be carried over until Howlett is decided. If Howlett is not decided on the merits because of some procedural or jurisdictional reason, then Petitioner requests that certiorari be granted in this case so that the issues presented by Howlett can be presented by this Petitioner.

CONCLUSION

For the foregoing reasons, and if this Court disapproves the reasoning of the District Court of Appeal, Second District of Florida in Howlett v. Rose, then certiorari should be granted and the decision below reversed and remanded for reconsideration consistent with Howlett.

Respectfully submitted,

Bruce S. Rogow
Nova University Law Center
3100 S.W. 9th Avenue
Fort Lauderdale, Florida 33315
(305) 524-2465

Counsel for Petitioner

A P P E N D I X

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BRADLEY ARTHUR,

Appellant,

v.

HILLSBOROUGH COUNTY BOARD OF CRIMINAL JUSTICE,

Appellee.

Case No. 89-00435

Opinion filed February 21, 1990.

Appeal from the Circuit Court for Hillsborough County; Morison Buck, Judge.

Bruce Rogow, Ft. Lauderdale, for Appellant.

James E. Thompson of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tampa, for Appellee.

PER CURIAM.

Dismissed. See Hill v. Dep't of Corrections, 513 So.2d 129 (Fla. 1987), cert. denied, ___ U.S. ____, 108 S.Ct. 1024 (1988); Howlett v. Rose, 537 So.2d 706 (Fla. 2d DCA),

review denied, 545 So.2d 1367 (Fla. 1989), cert. granted, __U.S.__, 110 S.Ct. 403 (1989).

LEHAN, A.C.J., and FRANK and PARKER, JJ., Concur.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

CASE NO. 89-00435

BRADLEY ARTHUR,)

Appellant,)

v.) MOTION FOR REHEARING

HILLSBOROUGH COUNTY)
BOARD OF CRIMINAL
JUSTICE,)

Appellee.)
_____/

Appellant Bradley Arthur respectfully requests the Court to grant rehearing in this case and reconsider holding the disposition in abeyance pending the United States Supreme Court's decision in Howlett v. Rose, 537 So.2d 706 (Fla. 2nd DCA), cert. granted ___U.S.___, 110 S.Ct. 403 (1989), which will be argued and decided within the next four months.

This Court's dismissal will require the Appellant to seek the expensive route of certiorari review solely in order to maintain the status quo of his case pending the Supreme Court's disposition of Howlett. If Howlett is

reversed, this Court's decision in this case will also be reversed. If Howlett is affirmed, the Supreme Court's rationale may offer a reason for not applying Howlett to this case, a case which was brought long before Howlett's advent.

For the foregoing reasons the Appellant seeks rehearing or the holding of this case on this Motion to avoid finality until Howlett is decided in the Supreme Court.

Respectfully submitted,

BRUCE ROGOW
Fla. Bar No. 067999
BRUCE S. ROGOW, P.A.
2441 S.W. 28th Avenue
Fort Lauderdale, Florida 33312
(305) 524-2465

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this "Motion for Rehearing" has been furnished to JAMES E. THOMPSON, ESQ., P. O. Box 1438, Tampa, Florida 33601, by U.S.Mail this 27th day of February, 1990.

BRUCE ROGOW

lm-d66

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

MARCH 13, 1990

BRADLEY ARTHUR,	]	
	]	
Appellant,	]	
	]	
v.	]	Case no. 89-00435
	]	
HILLSBOROUGH COUNTY BOARD OF CRIMINAL JUSTICE,	]	
	]	
Appellee.	]	
	]	

Counsel for appellant having filed a motion for rehearing in the above-styled case, upon consideration, it is

ORDERED that said motion is hereby denied.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

By: /s/Carol L. Storlundm
CHIEF DEPUTY CLERK

c: Bruce Rogow, Esquire
James E. Thompson, Esquire
Hon. Richard L. Ake

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

CASE NO. 89-00435

BRADLEY ARTHUR,)

Appellant,)

v.) APPELLANT'S MOTION FOR STAY (OR RECALL) OF THE MANDATE

HILLSBOROUGH COUNTY BOARD OF CRIMINAL JUSTICE,)

Appellee.)

_____/

Pursuant to Rule 9.340, Florida Rules of Appellate Procedure, Bradley Arthur respectfully requests that the Court stay issuance of the mandate pending his timely petition for certiorari to the Supreme Court of the United States.

The decision of this Court was based upon Howlett v. Rose, 537 So.2d 706 (Fla. 2d DCA, 1989). Howlett is awaiting decision in the Supreme Court of the United States. It was argued on March 20, 1990. 58 L.W. 3573.

The Appellant intends to petition for

certiorari in order to protect his rights should this Court's decision in Howlett be reversed. That petition will be timely filed and therefore Appellant requests this Court to stay issuance of its mandate pending notice of the timely filing of Bradley Arthur's petition for Writ of certiorari, and upon such timely filing to continue the stay of mandate until the United States Supreme Court rules on the petition.

This Motion is made in good faith, not for the purpose of delay, and is consistent with counsel's obligation to protect his client's interests in light of the impending decision in Howlett v. Rose.

Respectfully submitted,

BRUCE ROGOW
Fla. Bar No. 067999
BRUCE S. ROGOW, P.A.
2441 S.W. 28th Avenue
Fort Lauderdale, Florida 33312
(305) 524-2465

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this "Appellant's Motion for Stay (or Recall) of the Mandate" has been furnished to JAMES E. THOMPSON, ESQ., P. O. Box 1438, Tampa, Florida 33601, by U.S.Mail this _____ day of March, 1990.

_____
BRUCE ROGOW

lm-d67

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

APRIL 12, 1990

BRADLEY ARTHUR, Appellant, v. HILLSBOROUGH COUNTY BOARD OF CRIMINAL JUSTICE, Appellee.	]]]]]]]]]]]	Case No. 89-00435

Counsel for appellant having filed a motion for stay of mandate in the above-styled case, upon consideration, it is

ORDERED that said motion is hereby granted.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Bruce Rogow, Esquire
James E. Thompson, Esquire
Hon. Richard L. Ake